



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 20, 2017

Ms. Theresa Cullen  
Deputy City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2017-28844

Dear Ms. Cullen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 688987 (Reference# 17-1020-1156).

The City of El Paso (the "city") received a request for agreements pertaining to properties in a certain area during a specified time period.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.105, and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-20436 (2017). In that ruling, we concluded the city must release the responsive information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the submitted information is identical to the information previously submitted and ruled on by this office, the city must continue to rely on Open Records Letter No. 2017-20436 as a previous determination and release the information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). To the extent the submitted information is not subject to the previous ruling, we will address the submitted arguments against release of the information at issue.

Next, although you raise section 552.110 of the Government Code, we note section 552.110 protects the interests of third parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See* Gov't Code § 552.110 (excepts from disclosure trade secrets or commercial or financial information obtained from person). Thus, we do not address your argument under section 552.110 of the Government Code.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov't Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You represent the information pertains to ongoing negotiations related to the acquisition of properties by the city. In addition, you state release of the information would disadvantage the city by allowing competitors to offer higher prices and more favorable payment terms for the property the city seeks to acquire. After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information at issue under section 552.104(a) of the Government Code.<sup>2</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'K Hillis', written over a horizontal line.

Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 688987

Enc. Submitted documents

c: Requestor  
(w/o enclosures)